

October 5, 2016

**VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: WC Docket No. 11-42 – Lifeline and Link Up Reform and Modernization  
WC Docket No. 09-197 – Telecommunications Carriers Eligible for Universal  
Service Support  
WC Docket No. 10-90 – Connect America Fund  
EX PARTE PRESENTATION**

Dear Ms. Dortch:

On October 4, 2016, Mark Rubin, Senior Executive, Government Relations, TracFone Wireless, Inc. (“TracFone”), Shawn Chang of Wiley Rein, David Avila, Assistant Vice President, Lifeline Services, TracFone, Raymundo Varela, Vice President, Revenue and Retention, TracFone, and undersigned counsel on behalf of TracFone, met with Claude Aiken, Legal Advisor to Commissioner Mignon Clyburn.

During the meeting, we discussed TracFone’s pending motion for stay or deferral of the effective date of revised 47 C.F.R. § 54.407(c)(2) filed September 8, 2016. That revised rule, when effective, will reduce from 60 days to 30 days the period for de-enrolling from the Lifeline program certain customers for non-usage. Positions expressed during the meeting were consistent with those set forth in TracFone’s unopposed motion and prior ex parte letters. Specifically, we explained that the reduction of the non-usage period from 60 days to 30 days would disrupt service to thousands of low-income Lifeline-eligible households each month who are enrolled in the program and who intend to remain enrolled but who temporarily do not use the service for limited periods of time. The most common reasons for non-usage include temporary absence from the country, illness or incapacity, and misplaced or broken handsets. We also explained that the Commission provided no explanation or rationale for its shortening of the non-usage de-enrollment period other than to suggest that it was a *quid pro quo* for the decision to expand the definition of usage to include outbound text messaging.

We discussed with Mr. Aiken another important reason why the effective date of the non-usage de-enrollment rule should be deferred: that there are significant ambiguities and inconsistencies in the Commission’s rules (both current rules and the recently-promulgated revisions to the rules) and in the Universal Service Administrative Company’s (“USAC”) interpretation and application of those rules in administering the Lifeline program. It is not clear from the Commission’s rules whether Lifeline providers are required to de-enroll customers and cease claiming reimbursement from the Universal Service Fund for serving such customers immediately upon the expiration of the non-usage period (currently 60 days, soon to be 30 days),

whether the obligation to de-enroll customers and the loss of reimbursement occurs at the end of the notification period (currently 30 days, soon to be 15 days), or whether the obligation to provide service continues throughout the notification period but the ability to claim reimbursement for providing such service terminates at the end of the 60 day (soon to be 30 day) non-usage period.

The current version of Section 54.405(e)(3) read in isolation states that de-enrollment may not occur until expiration of the notification period:

“ . . . an eligible telecommunications carrier must provide the subscriber 30 days’ notice, using clear, easily understood language, that the subscriber’s failure to use the Lifeline service within the 30-day grace period will result in service termination for non-usage under this paragraph. **If the subscriber uses the service within 30 days of the carrier providing such notice, the eligible telecommunications carrier shall not terminate the subscriber’s Lifeline service.**” (emphasis added).

Section 54.405(e)(3) states unequivocally that Lifeline subscribers remain enrolled through the expiration of the notification period. Implicit in the requirement that a Lifeline provider must continue to serve a subscriber through the end of the notification period is the notion that the provider will continue to receive Universal Service Fund support for serving that subscriber through the end of the notification or “cure” period. Without explanation, the highlighted sentence above from Section 54.405(e)(3) has been removed from the revised version of the rule which, absent deferral, will become effective December 2, 2016. Thus, it will no longer be explicit that if a subscriber uses the service during the “cure” period, his/her service may not be terminated.

Section 54.407(c)(2) of the Commission’s rules, as revised, seems to contradict Section 54.405(e)(3). That section states as follows:

“After service activation, an eligible telecommunications carrier shall only continue to receive universal service support reimbursement for such Lifeline service provided to subscribers who have used the service within the last 30 days, or who have cured their non-usage as provided for § 54.405(e)(3).”

Section 54.407(c)(2) could be read to require providers to de-enroll customers immediately after 30 days’ non-usage). At the end of that non-usage period, the subscriber would have to be de-enrolled. Once a subscriber has been de-enrolled he/she would not be able to use the service during the notification period even if he/she attempted to do so unless the subscriber had remaining unused Lifeline minutes which had not expired and which are carried over from one month to the next.

This facial inconsistency makes the non-usage de-enrollment rule and the impending reduction of the non-usage period problematic. How can a de-enrolled customer “cure” his/her non-usage by using the service if the customer already has been de-enrolled from the program

and no unused minutes are available for the subscriber's use? The so-called "cure" period would be largely illusory. Even USAC – the Commission-established Lifeline program administrator, seems confused based on its own public materials. Attached to this letter are several pages from a FCC-USAC Joint Training Event dated June 19, 2012 (copies of these pages were provided to Mr. Aiken during the October 4 meeting). Page 24 of the FCC-USAC Training Event document (prepared based on the 2012 version of the rules) states the following requirements regarding non-usage:

- Must provide consumer with 30 days' notice.
- If no response after 30 days, must be de-enrolled from Lifeline and ETC cannot claim support.

The language on p. 24 is explicit and is consistent with Section 54.405(e)(3). However, that language is contradicted on the very next page of the FCC-USAC document. At p. 25, the FCC-USAC Training Event document states that ETCs must de-enroll a Lifeline customer if the customer:

...

Does not use the service for 60 consecutive days.

...

Page 24 states that de-enrollment and loss of Universal Service Fund support may only occur after the expiration of the 30 day cure period. Page 25 contradicts page 24 by stating that de-enrollment must occur as soon as a customer does not use the service for 60 days (*i.e.*, immediately at the end of the non-usage period).

In short, the Commission's rules and the FCC-USAC explanations of the rules are ambiguous and inconsistent regarding when de-enrollment for non-usage must occur and when the provider's ability to receive reimbursement for serving such customers ends. Given these inherent ambiguities and inconsistencies in the rules and in their interpretations, it seems probable that different Lifeline providers may be interpreting and applying these rules differently. TracFone has implemented a process based on its understanding of Section 54.407(c) and page 25 of the FCC-USAC Training document: it de-enrolls non-users immediately upon expiration of the non-usage period and ceases claiming Lifeline support for such customers as of that date. At the end of the notification/cure period, those already de-enrolled customers' handsets are deactivated if there has been no usage during the cure period. Other providers may interpret the rules differently and may continue to keep 60 day non-using customers enrolled throughout the cure period and may continue to claim Universal Service Fund support for those customers.

Before the Commission allows the revised de-enrollment for non-usage rule to take effect (now scheduled to occur on December 2, 2016), it should address and resolve the ambiguities in its rules and how those rules are being interpreted and applied by providers and by USAC. Only

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by staying or deferring the rule change as requested by TracFone can the Commission assure that the rules state with certainty what the Commission intended and ensure that providers and USAC have a common understanding of the requirements.

Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically. If there are questions, please communicate directly with undersigned counsel for TracFone.

Sincerely,



Mitchell F. Brecher  
*Counsel for TracFone Wireless, Inc.*

cc: Mr. Claude Aiken

Enclosure

# Enclosure



# *FCC-USAC Joint Training Event*

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# **Lifeline Program Overview**

June 19, 2012 | Washington, DC

## Non-Usage

- ETCs that offer pre-paid Lifeline service (customer does not pay a monthly bill) must monitor usage to identify Lifeline subscribers that do not use their phones for 60 consecutive days.
- Must provide consumer with 30 days notice.
- If no response after 30 days, must be de-enrolled from Lifeline and ETC cannot claim support.
- Number of de-enrolled for non-usage must be reported by month on ETC annual certification form.

**ETCs must de-enroll a Lifeline customer if the customer:**

- Is found to have duplicate Lifeline accounts;
- Does not use service for 60 consecutive days;
- Fails to re-certify his or her eligibility; or
- Fails to re-certify that his or her household has only one Lifeline account.